THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITON NO. 4892 OF 2006

DATED: 14-03-2006

BETWEEN:

Smt. T. Uma Rani, W/o. T. Ramesh … Petitioner

And

The Commissioner,

Greater Visakhapatnam Municipal Corporation,

Visakhapatnam and another … Respondents

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

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ORDER:

Declaring the action of the respondent in not considering the representation of the petitioner dated 28-01-2006, and the proceedings of the 2nd respondent in Rc.No.9231/05/L1, dated 21-12-2005, in regard to the park of the Purushothapuram Layout Plan bearing No.78/89, of Pendurthi Mandal, Visakhapatnam, in survey numbers 4o to 50 as arbitrary and illegal, petitioner filed the writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the first respondent and the standing counsel appearing for the second respondent and perused the material on record.

It is the case of the petitioner that pursuant to the representations made by petitioner before the Visakhapatnam Urban Development Authority along with similarly situated plot owners in the regularised lay out in Survey Nos.40 to 50 of

Purushothama Puram village, Layout of Pendurthi Mandal, 2nd respondent after verifying the original plan and the land, has issued proceedings in Rc.No.9231/05/L1, dated 21-12-2005 directing the Commissioner, Visakhapatnam Municipal Corporation to take appropriate necessary action on the unauthorized constructions made in the open land meant for park as per the provisions of the Municipal Corporation Act. It is stated that pursuant to the said order, the first respondent has not taken any action. Therefore, petitioner and six others made a representation on 28-01-2006 before the first respondent and to the District Collector and Executive Officer of Sri S.V.L.S. Devasthanam, Simhachalam to take necessary appropriate action to remove all illegal constructions/structures raised in the communal properties such as public park and roads in Visakhapatnam Urban Development Authority approved layout vide LP No.78/89 but the said representation has not been considered and disposed of by the Commissioner.

When a lay out plan has been approved, it is the duty of the Urban Development Authority and the Commissioner of Municipal Corporation to implement the lay out plan and to maintain the public parks, roads, open places without permitting the vested interest persons to exploit the same. It is also stated that as per the settled law, the land for the public purposes, viz., play ground, park in the sanctioned lay out cannot be allowed to be used for any other purpose including for any other public purpose. The land, which is reserved cannot be said to be the land belonging to the municipal corporation empowering it for alienation within the meaning of Section 148 of the Act. When the municipality cannot alienate the land meant for the public purpose, I am of the opinion that the persons who have obtained the lay out plan also cannot entitled to sell the land and the municipal corporation is bound to implement the lay out approved plan.

Having regard to the facts and circumstances of the case, the respondents are directed to consider and dispose of the representation of the petitioner and others dated 28-01-2006 and also to implement the proceedings of the Visakhapatnam Urban Development Authority in R.C.No.9231/05/L1 dated 21-12-2005 within four months from the date of receipt of a copy of this order.

V. ESWARAIAH, J.

Dated: 14-03-2006

Note:

Issue C.C.within three days.

(B/O)

rns